(1) Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SHARON HUGHES MENDONCA
Petitioner,

v.

AMY O'BRIEN WINTERSEN
Respondent(s

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

Sharon Hughes Mendonca
P.O. Box 390944
Cambridge, MA 02139

37pp

QUESTION(S) PRESENTED

Is a civil litigant entitled to post-judgment relief pursuant to Federal Rule of Civil Procedure 60 (b) (6) when post-judgment evidence indicates that the litigant was denied its due process of law to a fair trial because the court opinion on the merit and jury verdict contrary to the "Substanial" medical damage evidence records relevant to the fact.

PARTIES TO THE PROCEEDINGS

A List of all parties in addition to the party named do not appear in the caption of the case on cover page whose judgement is the subject of this petition is as follows:

Robin A. Maher and Commercial Insurance Company

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Sharon Hughes Mendonca respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

{x } For cases from **federal courts:**

The ordered judgement opinion of the United States Court of Appeals, appears at Appendix A, is reported April 21, 1999 and May 11, 1999 is unpublished.

The ordered judgement opinion of the State Trial Court, Jury Verdict, appears at Appendix B, to the Petition, is reported January 15, 1997, December 5, 1997, December 12, 1997 and January 28, 1998, is unpublished.

The notice judgement opinion of the State Supreme Court, appears at Appendix C, is reported May 28, 1999, is unpublished.

The ordered judgement of the U.S. District Court,

appears at Appendix D, is reported July 27, 1999 is unpublished, but can be found at 1995 WL911 759.

The ordered judgement of the U.S. Court of Appeals for the First Circuit, appears at Appendix E, is reported at 164 F. 3d 480 (1st Cir. 1999) December 27, 1999, is unpublished.

STATEMENT OF JURISDICTION

{x} For cases from **federal courts:**

The date on which the order of the U.S. Court of Appeals for the First Circuit ("Court of Appeals") decided my case was entered December 27, 1999. The Court of Appeals, ordered, denying timely filed petition for rehearing February 8, 2000. (see) Appendix E.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

CONSTITUTIONAL AND PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution Appendix F, provides in relevant part:

> "No person shall...be deprived of life,Liberty or property without Due Process of Law..." Federal Rule 60 (b) mistakes; inadvertence; excusable neglect ; newly discovered evidence; fraud, etc. on motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgement, order or proceeding for the following reasons: (1) mistake inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59 (b); (3) Fraud (whether heretofore denominated intrinsic or extrinsic) misrepresentation or other misconduct of an adverse party; (4) the judgement is void; (5) the judgement has been satisfied, released or discharged on a prior judgement upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgement should have prospective application;

> or (6) any other reason justifying relief from the operation of the judgement. The motion shall be made within a reasonable time and for reasons (1) , (2) and (3) not more than one year after the judgement, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgement or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgement, order or proceeding or to grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C. § 1655 or to set aside a judgement for fraud upon the court.

Writs of coram nobis, coram vobis, audita quenela and bills of review and bills in the nature of a bill of review are abolished and the procedure for obtaining any relief from a judgement shall be by motion as prescibed in these rules or by an independent action. (As amended Dec. 27, 1946, eff. Mar. 19, 1949; Mar. 2, 1987, eff. Aug. 1, 1987.)

STATEMENT OF THE CASE

April 21, 1999 State Court of Appeals, ordered, affirmed judgement of the Trial Court. May 11, 1999, order, denying litigant petition for rehearing. January 15, 1997 State District Trial Court, ordered, judgement finding for litigant. December 5, 1997 State Superior Trial Court, agreed respondent attorney records exhibit into evidence. The Jury Verdict, finding for the litigant on line 19. On line 20 thru 23 finding for litigant assesses damage in zero dollars. Constituional Statutory Provision Fourteenth Amendment, Appendix G, provides in relevant part: Nor shall any state make or enforce any law, nor deny to any person within its jurisdiction the equal protection rights of the law. Nor shall any state deprive any person of life, liberty or property without due process of law. December 12, 1997 State Trial Court, allowed, the litigant Notice of Appeal. January 28, 1998 allowed the litigant former attorney motion for withdrawal. May 28, 1999 State Supreme Court, denied, the litigant application for further Appell-

ate Review. July 27, 1999 U.S. District Court, ordered dismissal of the litigant Civil complaint proceeding. December 27, 1999 U.S. Court of Appeals for the First Circuit, ordered, affirmed judgement of the Trial Court. February 8, 2000 ordered, denying the litigant petition for rehearing. The Fundamental question in this case is whether the litigant is entitled to relief from a judgement, where the District Court lacked impartiality. This case arises under the context of the Fed. Civ. Proc. complaint. Where the litigant fully appreciate the significant of the issues presented by this case it is essential to consider its lengthy procedure. July 1, 1999 the litigant filed Fed. Civ. complaint seeks Constituitional Statutory Provision Fifth Amendment due process right of law, Appendix F, provides in relevant part: to present substanial medical damage evidence records relevant to the fact on the merit of the issue which former attorney Mr. Fiore improperly misrepresented and withholding vital evidence discovery documents relevant to the fact against the litigant, Doctor Hari Khalsa, Doctor Emilio Jaacques, Jr.,

vehicle damage, appraisal for product liabilitiy for the litigant to be compensated for injury, harm suffered and property damage from the impact from the respondent's intentional tort a wrongful act, judgement finding for litigant Sharon Hughes Mendonca at State Trial Court refers jurisdiction pursuant to 28 U.S.C. § 1331. Prescribed Federal Rule of Civil Procedure Rule 60 (b) (6) provides: (b) on motion for justifying relief from operation of the judgement. July 27, 1999 U.S. District Court, ordered, dismissal the litigant civil complaint proceeding for court sua sponte lack jurisdiction. December 27, 1999 U.S. Court of Appeals for the First Circuit, ordered, affirmed judgement of the Trial Court. February 8, 2000 ordered, denied the litigant petition for rehearing.

REASON FOR GRANTING THE PETITION

I.

The petition should be granted because the opinion below conflicts with this court's prior rulings on the essential Due Process Right of a litigant to a competent and impartial trier of fact.

The litigant Sharon Hughes Mendonca petition for writ certiorari should be granted because the opinion below conflicts with this court's important prior rulings on a litigant's Fundamental due process right, to a fair trial. In delineating the contours of this right, this court's has identified necessary elements: "impartiality. "Jordan v. Commonwealth of Massachusetts, 225 U.S. 167, 176 (1912) holding that" {d}ue process implies a tribunal impartiality to afford a hearing") (emphasis added; Tanner v. United States, 483 U.S. 107, 126 (1987) (same). It is clear that the due process requirement of impartiality applies both of jurors, e.g., Peter v. Kiff, 407 U.S. 493 (1972) (holding that "a defendant cannot consistent with due process, be subjected to trial by... jurors who are

intimidated by threat of mob violence or by jurors who have formed a fixed opinion about the case from newspaper publicity.") (citations omitted), and to judge e.g., Tumey v. State of Ohio, 273 U.S.510, 523 (1927) holding that due process is violated when a defendant is subjected to a judge has "a direct, personal, substantial pecuniary interest in reaching a conclusion against him in a case"); In re Murchison, 349 U.S. 133, 136 (1955) ("no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."); see also, Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 822 (1986) discussing various cases where due process required a judge to recuse himself from the proceeding). With respect to the requirement of "impartiality" this Court has held that due process is violated when a decision is rendered by without impartiality jurors. Jordan, 225 U.S. at 176; Peters, 407 U.S. at 501 (due process is violated when a person is "subjected to trial by jurors") (citations Jordan); see also, Mcllwain v. United States, 464 U.S. 972 (1983) Marshall, J.

and Brennan , J., dissenting from denying of a petition for certiorari) ("this court as well as other courts have recognized the right of impartility judges and jury"). The due process clause of the Fourteenth Amendment entitles the litigant Sharon Hughes Mendonca to a impartiality judge who can consider the case, weigh the evidence presented, evaluate the agrument of all sides and from conclusions leading to a final decision.The litigant Sharon Hughes Mendonca petiton should be granted so that this court may affirm the importance of its longstanding holdings on due process and so that it may confirm for the first time that the right to impartiality decisionmaker applies to a judges.

II.

The petition should be granted because the opinion below conflict's with this Court's prior rulings on the importance of Rule 60 (b) (6) as a means of effectuating due process rights.

The litigant Sharon Hughes Mendonca petition for writ certiorari

should be granted because the opinion below also conflicts with this Court's prior rulings on the importance of Rule 60 (b) (6) as a vehicle to correct violations of a party due process rights.

In Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), this court held that Rule 60 (b) (6) may be used to reopen and vacate a final judgement when a party learn, after a judgement has become final, that the judge may not have been impartial. This Court explained: Federal Rule of Civil Procedure 60 (b) (6) provides a procedure whereby in appropriate cases, a party may be relieved of a final judgement. In particular Rule 60 (b) (6)...grants Federal Courts broad authority to relieve a party from a final judgement "upon such terms as are just,"... The Rule does not particularize the factors that justify relief, but we have previously noted that it provides Courts with authority "adequate to enable them to vacate judgements wherever such action is appropriate to accomplish justice, "while also cautioning that it should only be applied in extraordinary

circumstances." Id at 863-64 (footnotes and citations omitted). In holding that the use of Rule 60 (b) (6) was appropriate, the Court weighed "the risk of injustice to the litigant..., the risk that the denial of relief will produce injustice in other cases and the risk of undermining the public's confidence in the judicial process." Id. at 864.

CONCLUSION

Accordingly, the litigant Sharon Hughes Mendonca respectfully request this Honorable Court for impartial judgement for the petition for Writ of Certiorari should be granted.

Respectfully submitted,

Sharon H. Mendonca

Sharon H. Mendonca
P.O. Box 390944
Cambridge, MA 02139

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

No. 98-P-154

Sharon Mendonca

v.

Amy O'Brien

Memorandum and Order pursuant to Rule 1:28, Assuming that Trial Counsel's objection to the admission of certain hospital records suffices to preserve the issue for our review, the plaintiff , acting pro se on appeal , has failed to include in the records appendix the same records of which she complains. Mass. R.A.P. 18 (a) & (b), as amended, 417 Mass. 1601, 1602 (1997). see Guardianship of Brandon, 424 Mass. 482, 497 N. 22 (1997). It is her burden as appellant, to provide us with a record which shows the alleged error. Buckmore v. Czelusniak Funeral Home, Inc.;

427 Mass. 1014 (1998). The record appendix is thus inadequate to admit of our intelligent review and we decline to go beyond it. see P&F Constr. Corp v. Friend Lumber Corp., 31 Mass. App. Ct. 57, 61-62 (1991). Otherwise, the plaintiff offers nothing by way of reasoned argument to cause us to disturb the judgement.

Judgement Affirmed

By the Court (Lenk, Gillerman and Spina, J. J.),
Ashey Ahearn
Clerk

Entered: April 21, 1999.

App. A

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

No. 98-P-154

Sharon Mendonca

vs.

Amy P. O'Brien

Order

The request for rehearing filed by the Plaintiff-Appellant having been considered, it is ordered that the said petition be, and the same hereby is denied.

By the Court (Lenk, Spina, and Gillerman, J.J.),
Lena Nong
Assistant Clerk

Entered: May 11, 1999

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT
DEPARTMENT OF THE TRIAL COURT
CAMBRIDGE DIVISION

Sharon Mendonca

vs.

Amy P. O'Brien Wintersen

Civil No. 1336-94

Judgement (Rule 58)

Upon finding of fact, conclusion of law and judgement (see finding) (it has been ordered and adjudged by the court (it is recorded by the clerk without court order) Judge Brant. That the plaintiff Sharon Mendonca recover of the defendant, Amy P. O'Brien Wintersen.

Robb Moscow
Clerk Magistrate

Entered: January 15, 1997.

App. B

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX SS. SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

Civil Action No. 97-512

Sharon Mendonca

vs.

Amy O'Brien

Before Botchford , J.

Transcript of Trial Proceedings

Appearances:

Stephen M. Fiore, Esq., Rainer and Rainer, 165 Franklin Street, Boston, MA, on behalf of the plaintiff.

Robin A. Maher, Esq., Segalini and Neville, 411 Waverly Oaks Road, Waltham, MA, on behalf of the defendant. E. Joan Cave, Official Court Reporter.

App. B

Tape 2A - 75

To offer as the next exhibit the Somerville Hospital Records. Mr. Fiore: I would object to and to clarify which records are which. As to exhibit number. The Court: It doesn't have exhibit number. Mr. Fiore: As the one proposed to be marked I would argue to the relevance of the record. The Court: Okay, why Don't you come to the sidebar. Conference at the Bench. (recording difficulties). Ms. Maher: Cambridge Hospital is exhibit 5 and Somerville Hospital is exhibit 6. (exhibit 6, Somerville Hospital records marked into evidence.) The Court: Okay. Court Reporter: exhibit 5, Cambridge Hospital records and exhibit 6.

Mendonca v. O'Brien Tape 3A - 134

(Recess) Jurors entering , all rise, please. Jurors remain

App. B

standing all others be seated. Court is now in session. The Clerk: May I inquire, your Honor. The Court: Yes. The Clerk Madam forelady/foreman, have at least ten members of this panel agreed upon a verdict? The forelady: Yes. The Clerk : May I have it, please. Members of the jury, you will Hear ken to your verdict as recorded by the Court, Middlesex Superior Court case 97-512, Sharon Mendonca vs. Amy P. O'Brien. Verdict of the jury for the plaintiff. The jury finds for the plaintiff Sharon Mendonca and assesses damage in Zero Dollars. So say you Madam forelady? The forelady: Yes.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX THE SUPERIOR COURT

Re: Mendonca vs. O'Brien

App. B

Civil Docket No. 97-512

To: Robert K. Rainer, Rainer & Rainer, Esq.
265 Franklin Street,
Boston, MA 02110

Clerk's Notice

This is to notify you that in the above- reference case the Court's action on December 9, 1997 is as follows: Notice of Appeal of plaintiff Sharon H. Mendonca from an order and judgement of the court entered on December 5, 1997. (copies sent to all counsel of record on December 9, 1997) Dated: at Cambridge, MA, this 9th day of December, 1997. Edward J. Sullivan, Clerk

of the Court's. By: James J. Lynch, III, Asstistant Clerk,

location room 9B (Cambridge, MA).

App. B

COMMONWEALTH OF MASSACHUSETT
COUNTY OF MIDDLESEX THE SUPERIOR COURT

Re: Mendonca vs. O'Brien

Civil Docket No. 97-512

To: Robert K. Rainer,
265 Franklin Street
Boston, MA 02110

Notice of Docket Entry

You are hereby notified that on January 1, 1998, the Following entry was made on the above reference Docket: Motion of plaintiff's attorney's Rainer and Rainer, for withdrawal of appearance with defendant Amy O'Brien's opposition and 9 (a) Affidavit of com-Pliance filed and; After consideration, allowed. (Neel, J.) notice sent January 29, 1998.

Dated: 29th day of January, 1998.
Edward J. Sullivan

Clerk of the Court's: By James J. Lynch, III, Asst. Clerk

APPENDIX C

SUPREME JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

Re: Mendonca vs. O'Brien

Docket No.: F.A.R. 10607

Notice of Denial of F.A.R Application. Please take notice that the above-captioned Application for Further Appellate Review has been considered by the Court and is denied.

Dated: May 28, 1999
Jean M. Kennett, Clerk

App. D

APPENDIX D

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

No. 99-11408

Sharon Mendonca

vs.

Amy O'Brien Wintersen

Ordered of Dismissal

July 27, 1999

Harrington, D.J.

Upon a review of the records in this case, the Court sua sponte dismissal Plaintiff's Complaint for Product Liability on the ground that the court lack jurisdiction over the cause of action in that both the plain-

tiff and the defendant are residents of the Commonwealth of Massachusetts, so ordered.

Edward F. Harrington
U.S. District Judge

APPENDIX E
NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-1905

Sharon Hughes Mendonca

vs.

Amy O'Brien Wintersen

Appeal from the United States District Court for the District of Massachusetts (Hon. Edward F. Harrington, U.S. District Judge).

BEFORE

Selya, Circuit Judge, Cyn, Senior Circuit Judge and Lipez, Circuit Judge. Sharon Hughes Mendonca on brief pro se. Robin Aaronson Maher and Segalini & Neville, on brief for appellee.

December 27, 1999

Per Curiam. After a thorough review of the record and the submissions of the parties, we affirm for the reason stated by the District Court in its order dated July 27, 1999. Furthermore, the District Court also lacked subject matter jurisdiction under the Rooker-Feldman doctrine. See District of Columbia Court of Appeals vs. Feldman, 460 U.S. 462, 476 (1983) ("{A} United States District Court has no authority to review Final Judgements of a State Court in Judicial Proceedings."); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) (same).

Affirmed 1st Cir. Loc. R. 27 (c).

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-1905

Sharon Hughes Mendonca

Vs.

Amy O'Brien Wintersen

BEFORE

Selya, Circuit Judge, Cyr, Senior Circuit Judge,
And Lipez, Circuit Judge

ORDER OF COURT

ENTERED: February 8, 2000

The motion for reconsideration is denied. The Federal Courts simply have no jurisdiction to review the State Court's decisions, no matter how inadequate appellant claims they may be, nor to adjudicate any state law claim between

citizens of Massachusetts. It is so ordered.

By the Court
Phoebe Morse
Clerk